

Appl. No. 10/735,950  
Response dated February 25, 2008  
Reply to Office Action of 01/24/2007

**Amendments to the Drawings:**

The Office states:

"The drawings filed November 3, 2006 are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "602" in Figure 6 has still been used to designate both the transmission shaft and the transmission housing."

Applicant submits a replacement drawing sheet for Figure 6 that corrects the double use of reference character 602. No new matter has been introduced by this replacement drawing sheet.

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### **REMARKS/ARGUMENTS**

Applicant has amended claims independent claims 18, and 26 and dependant claims 24, 25, and 28, and respectfully states that all claims are in condition for allowance.

Applicant has added new claims 44 through 51 and submits that the new claims overcome the cited art and are in condition for allowance.

### **New Claims 44 - 51**

The Office rejected claims 24, 25, 28 and 29 under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Wherein the Office stated:

"These claims relate to a vehicle model and are inherently unclear. The transmission and vehicle structure is all that is relevant in a patent claim not the name of the particular vehicle that includes a transmission. More specifically, the transmissions in these models may not be the same from year to year, may have optional transmissions, or the vehicles model may be discontinued in the future, therefore, the claim is unclear"

(Office Action, page 3).

Applicant's new claims 46, 48, 50, and 51 specify transmissions that were used on specific all terrain vehicle (ATV) models in the past and are therefore known devices.

These transmissions are known devices and are not indefinite.

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The Office has rejected claims 18, 19 and 24-29 under 35 U.S.C. 103(a) as being unpatentable over Pestotnik (Pestotnik), USPN 6,182,784 (provided in Applicant's IDS) in view of Hasegawa et al. (Hasegawa) US PUB 2003/0070848 and further in view of Grayson (Grayson), USPN 5,247,845. The Office has rejected under 35 U.S. C. 103(a) as being unpatentable over Pestotnik in view of Hasegawa and Grayson as applied to claims 18, 19, and 24-29 above, and in further view of Yokoyama (USPN 5,144,852) (Yokoyama).

Applicant respectfully points out that according to the MPEP §2142, "to establish a *prima facie* case of obviousness, three basic criteria must be met:

- 1<sup>st</sup> there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings;
- 2<sup>nd</sup> there must be a reasonable expectation of success;
- 3<sup>rd</sup> the prior art reference (or references when combined) must teach or suggest all of the claim limitations."

These criteria have not been met and Applicant's new claims 44-51 overcome the combination of Pestotnik, in view of Hasegawa, in view of Grayson and in further view of Yokoyama.

The Office states:

"Claims 18, 19 and 24-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik (USPN 6,182,784) (provided in Applicant's IDS) in view of Hasegawa et al. (US PUB 2003/0070848) and further in view of Grayson (USPN 5,247,845).

Pestotnik discloses an ATV having a transmission, the transmission having a shaft and a housing and further having a power takeoff shaft (56a) that transfers energy to an external device. Pestotnik discloses a sub-

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transmission (see col. 6, lines 51-67) that includes a normal, low and "super" low speed/gear position. Furthermore, it is stated that the device is placed in a neutral position.

However, Pestotnik does not disclose power being transferred from the engine to the transmission without a belt or the transmission shaft or having a releasably connectable shaft extension that is coupled to the transmission shaft an "accessible" through an opening in the transmission housing.

Hasegawa et al. discloses the well known aspect of using an engine, a transmission and a PTO where the power from the engine is transferred to transmission shaft without a belt. Using a belt transmission is not the only type of transmission known or that would be compatible with the arrangement of Pestotnik.

Grayson discloses a power takeoff arrangement having a transmission/drive shaft (12) and an opening through which a transmission shaft extension (30) is releasably coupled thereto. Providing a shaft member that transitions to a driven device is a well-known feature in transmission devices.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the arrangement of Pestotnik by providing a "beltless" transmission as taught by Hasegawa et al. and a transmission shaft extension/adapter that is releasably connectable to the transmission shaft through an opening in the transmission housing as taught by Grayson so as to provide an "adaptability" feature to the PTO arrangement improve it's versatility.

With respect to Claims 24, 25, 28 and 29, Examiner is interpreting these claims to be a transmission that is an ATV transmission on a comparable vehicle as Hasegawa et al."

(Office Action, pages 4-5.)

The Office states:

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"Claims 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pestotnik in view of Hasegawa et al. and Grayson as applied to claims 18,19 and 24-29 above, and further in view of Yokoyama (USPN 5,144,852).

Pestotnik in view of Hasegawa et al. and Grayson do not specifically disclose a sub-transmission plate providing a neutral position as claimed. Although Pestotnik discloses a sub-transmission and a plurality of shift positions (col. 6, lines 51-67), Examiner is not relying on this detail to be a transmission plate containing a position.

Yokoyama (Fig. 1) discloses a shift plate having a plurality of positions. The relevance is merely in a providing a shift plate having position.

With respect to claims 22 and 23, the dependency of these claims from 21 does not require that a transmission shift plate be required to have a plurality of neutral positions and furthermore it is proper to use the terms "high", "low" or "super low" positions to describe any gear position as these detail likewise are not claimed so as to be included in one arrangement. Therefore, it is proper to refer to a single gear position as high or low in one interpretation and low or super low in another.

It would have been obvious to one of ordinary skill in the art to use a shift plate arrangement as taught by Yokoyama in the sub-transmission gear selection arrangement as disclosed by Pestotnik so as to provide a position engagement and indication of the proper and desired gear position while providing a neutral position between two gear positions that may be called a high and low, or a low and super low, which is consistent with the gear positions disclosed by Pestotnik."

(Office Action, pages 6-7.)

The Office states:

"With respect to Applicant's argument that Examiner ignores the fact that the manufacturer of the transmissions used in the claimed vehicle

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ATV models did not provide a neutral position on the shift plate, this does not prevent Yokoyama from teaching this detail and properly modifying the base references."

(Office Action, page 8)

Respectfully, the Office uses hindsight reasoning to combine the cited references and then assert that Applicant's invention results therefrom. Respectfully the references teach what they teach and no more. It is improper for the Office to assert that "...this does not prevent Yokoyama from teaching this detail and properly modifying the base references." Office Action Page 8. It is improper to "modify" the base references as the Office asserts, the base references teach what they teach.

None of the references cite by the Office, either singly or in combination, teach how to modify an existing all terrain vehicle (ATV) transmission to provide a first neutral position and then a second neutral position in order to facilitate creation of a power take-off where one did not previously exist as Applicant does in Applicant's new claims.

Hasegawa's farm tractor does not meet the limitations of Applicant's all terrain vehicle (ATV) as recited in Applicant's claims, these are not the same vehicle. Hasegawa's working vehicle is a large tractor that separates a main-speed-change unit from a sub-speed-change unit, i.e.:

"Also, the arrangement with the main-speed-change-unit, which vibrates relative to the sub-speed-change unit, being disposed independently of the sub-speed-change unit with a distance therefrom results in creation of a free space between the main- and sub-speed-change units.



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Hasegawa ¶ [0014]

Pestotnik discloses a continuously variable transmission (CVT) which is not Applicant's transmission. Hasegawa's farm tractor is much larger than Applicant's ATV and presents a fundamentally different mechanical design and solves a vibration problem presented by that fundamentally different mechanical design. There is no suggestion to combine these references nor is there any indication of success that Pestotnik's CVT transmission could be replaced with a non-belt type transmission complete with power takeoff.

Yokoyama merely shows a shift plate and nothing more. There is no teaching in Yokoyama that explains how to provide neutral positions in existing transmissions where such neutral positions did not previously exist. There is no indication of whether or not this could even be done at all successfully. To assert, as the Office has done, that Yokoyama could teach this detail is impermissible hindsight reasoning.

Grayson teaches an adaptation to a "crankshaft 12." Grayson Col. 3, lines, 17, 27, 35, 44; Col. 4, lines, 1, 7, 8, 17, 23, 26. Grayson does not teach adaptation to a transmission shaft. A crankshaft is not a transmission shaft. Transferring power from Grayson's crankshaft extension will not make Applicant's invention.

The combination of cited art, either singly or in combination, does not teach or suggest all of Applicant's claim limitations. There is no suggestion in the art to combine the references as the Office has done. There is no expectation of success in achieving Applicant's claim limitations by making the combination of references.

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### CONCLUSION

Applicant has cancelled claims 1-17, and 30-43. Applicant has amended claims 18, 24, 25, 26, 28, and 29. Applicant has presented new claims 44-51.

The combination of Pestotnik, Grayson, Hasegawa, and Yokoyama do not teach or suggest all of Applicant's claim limitations. There is no expectation of success in achieving all of Applicant's claim limitations by making the combination or combinations. There is no suggestion in the art to combine the references as the Office has done.

Applicant submits that the rejection of dependent claims not specifically addressed, are addressed by Applicant's arguments to the claim(s) on which they depend.

Applicant respectfully submits that all claims are in condition for allowance and request such.

Communication via cleartext email is authorized.

Respectfully submitted,  
PELOQUIN, PLLC

February 25, 2008  
Date

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### CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted herewith via facsimile transmission to Telephone No. (571) 273-8300 on the date indicated below and is addressed to: Mail Stop AF, Commissioner for Patents, Box 1450, Alexandria, Virginia 22313-1450.

Date of Deposit: February 25, 2008

Mark S. Peloquin, Esq.  
(Typed or printed name of person transmitting paper or fee)

Mark S. Peloquin, Esq. February 25, 2008  
(Signature of person transmitting paper or fee) Date

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